

1 AN ACT relating to gift cards.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 434.560 is amended to read as follows:

4 As used in KRS 434.550 to 434.730, unless the context otherwise requires:

5 (1) "Automated banking device" means any machine which when properly activated by
6 a credit card, debit card or personal identification code will perform any of the
7 following services:

8 (a) Dispense money as a debit to the cardholder's savings or checking account;~~{~~
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10 (b) Print the cardholder's savings or checking account balances on a statement;~~{~~
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12 (c) Transfer funds between a cardholder's savings and checking account;~~{~~~~}~~

13 (d) Accept payments on a cardholder's loan;~~{~~~~}~~

14 (e) Dispense cash advances on an open end credit or a revolving charge
15 agreement;~~{~~~~}~~

16 (f) Accept deposits to a customer's savings or checking account;~~{~~~~}~~

17 (g) Receive inquiries of verification of checks and dispense information which
18 verifies that funds are available to cover said checks; or

19 (h) Cause money to be transferred electronically from a cardholder's account to
20 an account held by any business, firm, retail merchant, corporation, or any
21 other organization;

22 (2) "Cardholder" means:

23 **(a) For a credit or debit card,** the person or organization named on the face of a
24 credit or debit card to whom or for whose benefit the credit or debit card is
25 issued by an issuer; **or**

26 **(b) For a gift card, any person or organization to whom a physical or virtual**
27 **gift card is issued through a purchase, or who receives a gift card from a**

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willing party;

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(3) "Credit card" means any instrument or device, whether known as a credit card, credit plate, credit number or by any other name, issued by an issuer for the use of the cardholder in obtaining money, goods, services or anything else of value on credit;

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(4) "Debit card" means any instrument or device, known by any name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services, and anything else of value, payment of which is made against funds previously deposited by cardholder;

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(5) "E.F.T. system" means an electronic funds transfer system whereby funds are transferred electronically from a cardholder's account to any other account;

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(6) "Expired credit card" means a credit card which is no longer valid because the term shown on it has expired;

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(7) "Expired debit card" means a debit card which is no longer valid because the term shown on it has expired;

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(8) **"Face value" means the highest monetary value listed on a gift card or its packaging, or if no value is listed, two hundred fifty dollars (\$250);**

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(9) "Gift card" means a card, code, or device, whether activated or unactivated, that:

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(a) Is issued on a prepaid basis primarily for personal, family, or household purposes in a specified amount, regardless of whether that amount may be increased or reloaded in exchange for payment; and

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(b) May be redeemable upon presentation by a cardholder at a single merchant or group of merchants, or at multiple unaffiliated merchants within a payment card network;

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(10) "Gift card redemption information" means information unique to each gift card which allows the cardholder to access, transfer, or spend the funds on that gift card;

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1 (11) "Issuer" means the business organization or financial institution which issues a
 2 credit, ~~for~~ debit, or gift card or its duly authorized agent;

3 (12)~~(9)~~ "Merchant" means an owner or operator of any retail mercantile establishment
 4 or any agent, employee, lessee, consignee, officer, director, franchisee, or
 5 independent contractor of such owner or operator. "Merchant" also means:

6 (a) A person who receives from an authorized user of a payment card, or
 7 someone the person believes to be an authorized user, a payment card or
 8 information from a payment card, or what the person believes to be a payment
 9 card or information from a payment card, as the instrument for obtaining,
 10 purchasing, or receiving goods, services, money, or anything else of value
 11 from the person; or

12 (b) *A person engaged in the business of selling gift cards to consumers;*

13 (13)~~(10)~~ "Participating party" means a business organization or financial institution, or
 14 any duly authorized agent of such business organization or financial institution,
 15 which is obligated by contract to acquire from a person, business organization, or
 16 financial institution providing money, goods, services or anything else of value, a
 17 sales slip, sales draft, or other instrument evidencing a credit, ~~for~~ debit, or gift card
 18 transaction and from whom the issuer is obligated by contract to acquire or
 19 participate in such sales slip, sales draft or other instrument;

20 (14)~~(11)~~ "Payment card" means a credit card, charge card, debit card, or any other card
 21 that is issued to an authorized card user and that allows the user to obtain, purchase,
 22 or receive goods, services, money, or anything else of value from a merchant;

23 (15)~~(12)~~ "Presentation or presents" means~~[as used herein shall be construed to define]~~
 24 those actions taken by a cardholder or any person to introduce a credit or debit card
 25 into an automated banking device or merely displaying or showing a credit, ~~for~~
 26 ~~debit, or gift~~ card to the issuer, a person or organization providing money, goods,
 27 services, or anything else of value, or any other entity with intent to defraud;

1 ~~(16)~~~~[(13)]~~ "Receives" or "receiving" means acquiring possession or control of a credit or
2 debit card;

3 ~~(17)~~~~[(14)]~~ "Reencoder" means an electronic device that places encoded information from
4 the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a
5 different payment card;

6 ~~(18)~~~~[(15)]~~ "Revoked credit card" means a credit card which is no longer valid because
7 permission to use it has been suspended or terminated by the issuer;

8 ~~(19)~~~~[(16)]~~ "Revoked debit card" means a debit card which is no longer valid because
9 permission to use it has been suspended or terminated by the issuer; and

10 ~~(20)~~~~[(17)]~~ "Scanning device" means a scanner, reader, or any other electronic device that
11 is used to access, read, scan, obtain, memorize, or store, temporarily or
12 permanently, information encoded on the magnetic strip or stripe of a payment card.

13 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 434.550 TO 434.730 IS
14 CREATED TO READ AS FOLLOWS:

15 **(1) A person is guilty of gift card tampering when he or she intentionally**
16 **manipulates a gift card's packaging or security features to access the gift card's**
17 **information without authorization and with the intention of using the**
18 **information to improperly access and utilize funds placed on the gift card by**
19 **another.**

20 **(2) Gift card tampering is a Class D felony.**

21 **(3) This section shall not apply to tampering with an activated gift card with or**
22 **without the consent of the cardholder.**

23 **(4) Conduct which may constitute a violation of this section may be used to show a**
24 **violation of KRS 506.120, but a person shall not be convicted of a violation of this**
25 **section and KRS 506.120.**

26 ➔Section 3. KRS 434.580 is amended to read as follows:

27 (1) **(a)** A person who takes a credit, ~~for~~ debit, **or gift** card from the person,

1 possession, custody, or control of another without the consent of the
 2 cardholder, ~~for of~~ the issuer, **or, for a gift card, the merchant**, or who, with
 3 knowledge that it has been so taken, receives the credit, ~~for~~ debit, **or gift** card
 4 with intent to use it or to sell it or to transfer it to a person other than the
 5 issuer, ~~for~~ the cardholder, **or, for a gift card, the merchant**, is: ~~guilty of a~~
 6 ~~misdemeanor and is~~

7 **1. For a credit or debit card**, subject to the penalties set forth in subsection
 8 (1) of KRS 434.730; **or**

9 **2. For a gift card, subject to the penalties set forth in KRS 514.030 for**
 10 **the face value of the gift card.**

11 **(b)** Taking a credit, ~~for~~ debit, **or gift** card without consent includes obtaining it
 12 by conduct defined or known as statutory larceny, common-law larceny by
 13 trespassory taking, common-law larceny by trick, embezzlement, or obtaining
 14 property by false pretenses, false promise, or extortion.

15 (2) A person who has in his **or her** possession or under his **or her** control two (2) or
 16 more credit, ~~for~~ debit, **or gift** cards which have been taken or obtained in violation
 17 of subsection (1) of this section is presumed to know that the credit, ~~for~~ debit, **or**
 18 **gift** cards have been so taken or obtained.

19 ➔ Section 4. KRS 434.650 is amended to read as follows:

20 (1) (a) A person who, with intent to defraud the issuer, a participating party, a
 21 person~~[,]~~ or organization providing money, goods, services, or anything else
 22 of value, or any other person:

23 1. Uses for the purpose of obtaining money, goods, services, or anything
 24 else of value a credit or debit card obtained or retained in violation of
 25 KRS 434.570 to 434.650, or any of such sections, or a credit or debit
 26 card which he or she knows is forged, expired, or revoked;

27 2. Obtains money, goods, services, or anything else of value by

1 representing without consent of the cardholder that he or she is the
2 holder of a specified card or by representing that he or she is the holder
3 of a card and such card has not in fact been issued;

4 3. Uses a credit or debit card obtained or retained in violation of KRS
5 434.570 to 434.650, or any of such sections, or a credit or debit card
6 which he or she knows is forged, expired, or revoked, as authority or
7 identification to cash or attempts to cash or otherwise negotiate or
8 transfer a check or other order for payment of money, whether or not
9 negotiable, if said negotiation or transfer or attempt to negotiate or
10 transfer would constitute a crime under KRS 514.040 or 516.030; ~~or~~

11 4. Deposits into his or her account or any account, via an automated
12 banking device, a false, fictitious, forged, altered, or counterfeit check,
13 draft, money order, or any other such document not his or her lawful or
14 legal property; or

15 5. Obtains a gift card or gift card redemption information from a
16 cardholder, issuer, or merchant by means of false or fraudulent
17 pretenses, representations, or promises;

18 is guilty as provided in paragraph (b) of this subsection.

19 (b) The penalty for violating paragraph (a) of this subsection is a Class B
20 misdemeanor unless:

21 1. The value of all money, goods, services, or other things of value
22 obtained in violation of this section over a six (6) month period is five
23 hundred dollars (\$500) or more but is less than one thousand dollars
24 (\$1,000), in which case it is a Class A misdemeanor;

25 2. The value of all money, goods, services, or other things of value
26 obtained in violation of this section over a six (6) month period is one
27 thousand dollars (\$1,000) or more but is less than ten thousand dollars

- 1 (\$10,000), in which case it is a Class D felony;
- 2 3. The person has three (3) or more convictions under subparagraph 1. of
3 this paragraph within the last five (5) years, in which case it is a Class D
4 felony. The five (5) year period shall be measured from the dates on
5 which the offenses occurred for which the judgments of conviction were
6 entered; or
- 7 4. The value of all money, goods, services, or other things of value
8 obtained in violation of this section over a six (6) month period is ten
9 thousand dollars (\$10,000) or more, in which case it is a Class C felony.
- 10 (2) A person who receives money, goods, services, or anything else of value as a result
11 of a false, fictitious, forged, altered, or counterfeit check, draft, money order, or any
12 other such document having been deposited into an account via an automated
13 banking device, knowing at the time of receipt of the money, goods, services, or
14 item of value that the document so deposited was false, fictitious, forged, altered, or
15 counterfeit or that the above described deposited item was not his or her lawful or
16 legal property, violates this subsection and is subject to the penalties set forth in
17 subsection (1) of this section.
- 18 (3) Knowledge of revocation shall be presumed to have been received by a cardholder
19 four (4) days after it has been mailed to him or her at the address set forth on the
20 credit or debit card or at his or her last known address by registered or certified
21 mail, return receipt requested, and, if the address is more than five hundred (500)
22 miles from the place of mailing, by air mail. If the address is located outside the
23 United States, Puerto Rico, the Virgin Islands, the Canal Zone, and Canada, notice
24 shall be presumed to have been received ten (10) days after mailing by registered or
25 certified mail.